

**Introduced by Committee on Natural Resources and Water
(Senators Kuehl (chair), Aanestad, Kehoe, Lowenthal,
Machado, Margett, and Migden)**

March 7, 2006

An act to amend Sections 6309, 6313, and 6314 of the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1846, as introduced, Committee on Natural Resources and Water. Public resources: Underwater salvage operation.

(1) Under existing law, the State Lands Commission administers the Shipwreck and Historic Maritime Resources Program, as defined, regulating salvage operations over and upon all tide and submerged lands of the state. Existing law requires a person conducting a salvage operation, as defined, on tide and submerged lands to obtain a permit from the commission, and authorizes the commission to designate persons, paid for by the permitholder, to observe all salvage operations. Existing law authorizes the commission to revoke the permit, after notice to the permitholder, if the commission finds that the permitholder failed to comply with the terms of the permit or other applicable provision of law.

This bill would, in addition, authorize the commission to issue a permit for the search, exploration, or recovery of nonhistoric vessels, aircraft, or submerged objects, and for the search, archaeological investigation, and recovery of historic vessels, aircraft, or other submerged historic resources, as defined, on tide and submerged lands. The bill would require the commission to issue a permit based on the commission's evaluation of the project and its probable impact on the site or objective, and the impact on the state submerged lands. The bill would authorize the commission to require the permitholder

to provide a reliable communication system for the observer to communicate with the commission. The bill would authorize the executive officer of the commission, after notice to the permitholder and time to correct, to issue a stop work order if the observer determines that activities conducted on the project are not within the terms of the permit. The bill requires the executive officer to hold a hearing within 3 business days of the issuance of a written notice of the stop work order.

(2) Existing law requires the commission to grant a permit for salvage operations to specified entities that demonstrate the capability to carry out salvage operations. Existing law requires a person proposing to conduct a salvage operation to provide to the commission a detailed plan for the protection and preservation of the site or objects, or materials removed from the site consistent with contemporary professional standards of archaeological data recovery.

This bill would, instead, require the commission to grant a permit when the proposed activity is justified by an educational, scientific, or cultural purpose, or the need to protect the integrity of the site or the resource. The bill would authorize the commission to grant a permit to specified entities that demonstrate the capability of properly carrying out archaeological investigations. The bill would require a person proposing such activity to submit a detailed project design that provides information, as specified.

(3) Existing law provides that the commission, or the Attorney General or a district attorney, at the request of the commission, may seek civil damages for the damage, loss, or destruction of specified objects, archaeological site, or historic resource located on or in submerged lands.

This bill would provide that any damages obtained shall be divided equally between the commission and the prosecuting agency.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6309 of the Public Resources Code is
- 2 amended to read:
- 3 6309. (a) The commission shall administer the Shipwreck
- 4 and Historic Maritime Resources Program, which consists of the

1 activities of the commission pursuant to this section and Sections
2 6313 and 6314.

3 (b) The commission has exclusive jurisdiction with respect to
4 salvage operations over and upon all tide and submerged lands of
5 the state. The commission may grant the privilege of conducting
6 salvage operations upon or over ~~any~~ of those lands by the
7 issuance of permits. The commission may adopt ~~any~~ rules and
8 regulations in connection with applications for those permits, and
9 the operations to be conducted ~~thereunder~~ *in the salvage*
10 *operation*, that the commission determines to be necessary to
11 protect those lands and the uses and purposes reserved to the
12 people of the state.

13 (c) The commission may issue permits for salvage on granted
14 tide and submerged lands only after consultation with the grantee
15 and a determination by the commission that the proposed salvage
16 operation is not inconsistent with the purposes of the grant.

17 (d) A salvage permit shall be required of ~~any~~ a person or entity
18 to conduct any salvage operation. As used in this section and
19 Section 6313, “salvage operation” means any activity, including
20 search by electronic means, or exploration or excavation using
21 tools or mechanical devices, with the objective of locating, and
22 *recovering or removing* ~~objects~~ *vessels, aircraft, or any other*
23 *cultural object* from the surface or subsurface of state submerged
24 lands.

25 (e) Salvage permits shall be issued for one year, with the
26 option to renew the permit for additional one-year periods at the
27 discretion of the commission upon a showing that the
28 permitholder has diligently and lawfully pursued the permitted
29 activity *and has achieved to a reasonable extent the purpose for*
30 *which the permit was issued*.

31 (f) The commission may require that a person designated by
32 the commission and paid by the permitholder be present during
33 ~~all~~ *each phase of a salvage* ~~operations~~ *operation* to observe and
34 monitor compliance with the terms of the permit. *The*
35 *permitholder shall, upon the request of the commission, provide*
36 *or pay for a reliable communication system for the observer to*
37 *maintain contact with the office of the commission while on the*
38 *salvage site*.

39 (g) ~~The commission may issue recreational recovery permits,~~
40 ~~which would allow exploration or excavation with small hand~~

1 ~~tools, but without mechanical devices, for the limited recovery of~~
2 ~~small objects. Those permits are not salvage permits and the~~
3 ~~activities do not constitute a salvage operation. The commission~~
4 ~~may issue a permit for the search or recovery of nonhistoric~~
5 ~~vessels, aircraft, or submerged objects, and for the search,~~
6 ~~archaeological investigation, and recovery of historic vessel,~~
7 ~~aircraft, or other submerged historic resources as defined in~~
8 ~~subdivision (b) of Section 6313. The commission shall determine~~
9 ~~the appropriate type of permit to issue based on its evaluation of~~
10 ~~the salvage project and the project's probable impact on the site~~
11 ~~or objective, and the impact on the state submerged lands. The~~
12 ~~commission shall not require a permit for any recreational diving~~
13 ~~activity which does not disturb the subsurface or remove objects~~
14 ~~or materials from a submerged archaeological site or submerged~~
15 ~~historic resource as defined in Section 6313. Recreational~~
16 ~~recovery permits shall not be issued for archaeological or~~
17 ~~historical resources.~~

18 (h) (1) Permits may be revoked by the commission, after
19 notice to the permitholder, at any time the commission finds that
20 the permitholder has failed to comply with the terms of the
21 permit or any law or regulation governing the permitted activity.
22 ~~An application for a permit may be denied by the commission~~

23 (2) ~~A stop work order may be issued by the executive officer of~~
24 ~~the commission at the request of the onsite observer provided by~~
25 ~~subdivision (f), if the observer determines that the activities of the~~
26 ~~permitholder are not within the permitted activity. A stop work~~
27 ~~order shall be issued after the nonpermitted activity is brought to~~
28 ~~the attention of the person in charge of the onsite operation and~~
29 ~~that person fails or refuses after sufficient time and opportunity~~
30 ~~to change or correct the activity. Written notice of the stop work~~
31 ~~order shall be given to the person in charge of the onsite activity~~
32 ~~and a hearing by the executive officer or his or her designate~~
33 ~~shall be provided to the permitholder within three business days.~~

34 (3) ~~After the hearing the commission may seek enforcement of,~~
35 ~~or the permitholder may seek relief from, the stop work order in~~
36 ~~the superior court in the county in which the activity is being~~
37 ~~conducted. The relief may include damages for failure to comply~~
38 ~~with the stop work order. The commission may deny an~~
39 ~~application for a permit when it finds that the applicant has failed~~
40 ~~to provide, for a period of 60 days, information specifically~~

1 requested by the commission which is necessary to complete the
2 application.

3 (i) When title to the objects, including a vessel, to be
4 recovered is vested in the state, the commission shall provide for
5 fair compensation to the permitholder in terms of a percentage of
6 the reasonable cash value, or a fair share, of the objects
7 recovered. The reasonable cash value of the objects shall be
8 determined by appraisal by qualified experts selected by the
9 commission. The commission shall determine the amount
10 constituting fair compensation, taking into consideration the
11 circumstances of each case. Title to all objects recovered is
12 retained by the state until it is released by the commission.

13 (j) The commission may fix and collect reasonable fees and
14 costs for the processing and issuance of permits under this
15 section. The applicant may be required *to post a bond to insure*
16 *the completion of the project or payment of costs, or* to deposit
17 funds with the commission sufficient to cover costs and expenses
18 chargeable to the applicant by law or by an agreement for
19 reimbursement.

20 SEC. 2. Section 6313 of the Public Resources Code is
21 amended to read:

22 6313. (a) The title to all abandoned shipwrecks and all
23 archaeological sites and historic resources on or in the tide and
24 submerged lands of California is vested in the state. All
25 abandoned shipwrecks and all submerged archaeological sites
26 and submerged historic resources of the state shall be in the
27 custody and subject to the control of the commission for the
28 benefit of the people of the state of California. The commission
29 may transfer title, custody, or control to other state agencies or
30 recognized scientific or educational organizations, institutions, or
31 individuals by appropriate legal conveyance.

32 (b) As used in this section, “submerged archaeological site”
33 and “submerged historic resource,” shall be given the broadest
34 possible meaning, to include any submerged object, structure,
35 building, watercraft, *aircraft*, or vessel and any associated cargo,
36 armament, tackle, fixture, human remains, or remnant ~~thereof~~ *of*
37 *those objects*, or ~~any~~ a site, area, person, or place, which is
38 historically or archaeologically significant, or significant in the
39 prehistory or history or exploration, settlement, engineering,
40 commerce, militarism, recreation, or culture of California and

1 ~~which~~ *that* is partially or wholly embedded in or resting on state
2 submerged or tidal lands.

3 (c) Sites with archaeological or historic significance shall be
4 determined by reference to their eligibility for inclusion in the
5 National Register of Historic Places *or the California Register of*
6 *Historical Resources*. Any submerged archaeological site or
7 submerged historic resource remaining in state waters for more
8 than 50 years shall be presumed to be archaeologically or
9 historically significant. The commission, with the assistance of
10 the State Office of Historic Preservation, shall identify, compile,
11 and maintain an inventory of shipwreck sites ~~of, or sites of~~
12 archaeological or historical significance and shall make the
13 listing available to the public.

14 (d) Permits for salvage operations involving submerged
15 archaeological sites or submerged historic resources ~~may be~~
16 ~~issued by the commission~~ *shall be granted by the commission*
17 *when the proposed activity is justified by an educational,*
18 *scientific, or cultural purpose, or the need to protect the integrity*
19 *of the site or the resource. The commission may issue permits to*
20 individuals or organizations representing museums, universities,
21 colleges, or other recognized scientific or educational institutions
22 and individuals ~~and organizations which that~~ demonstrate the
23 capability to ~~conduct those activities, as determined by the~~
24 ~~commission~~ *properly carry out archaeological investigations.*
25 The commission may deny an application for a permit to ~~any an~~
26 applicant who the commission determines ~~cannot demonstrate an~~
27 *has not demonstrated the* ability to properly conduct *an*
28 *archaeological investigation or* salvage activities. The
29 commission may consider the applicant's past conduct with
30 regard to salvage operations when making this determination.

31 (e) (1) ~~Prior to the commencement of an activity permitted~~
32 ~~issuance of a permit~~ under subdivision (d), the applicant shall
33 provide to the commission a detailed ~~plan which provides for the~~
34 ~~protection and preservation of the site or objects or materials~~
35 ~~removed from the site consistent with contemporary professional~~
36 ~~standards of archaeological data recovery.~~ *project design that*
37 *includes all of the following:*

38 (A) *The purpose of the project.*

39 (B) *A description of the methodology, technology, and*
40 *equipment to be employed.*

- 1 (C) *The project funding source.*
- 2 (D) *A timetable for the completion of the project.*
- 3 (E) *The composition, qualifications, and responsibilities of the*
- 4 *project team.*
- 5 (F) *A conservation and curation plan, if applicable.*
- 6 (G) *A plan to document all phases of the project.*
- 7 (H) *A safety plan.*
- 8 (I) *An outline and timetable for preparation and submission of*
- 9 *progress reports and a final report.*
- 10 (J) *Other information that the commission deems necessary to*
- 11 *properly evaluate the application.*

12 (2) All activities permitted under subdivision (d) or required
13 by this subdivision shall be accomplished under the *direct*
14 supervision of a person who meets the ~~professional~~ qualifications
15 required of a *professional* marine archaeologist.

16 (f) The commission shall forward applications for permits for
17 ~~excavation of a submerged archaeological site investigation or~~
18 ~~submerged excavation and recovery of historic vessels, aircraft,~~
19 ~~or other submerged historic resource resources~~ in state waters,
20 including the information required by subdivision (e), to the State
21 Office of Historic Preservation ~~Officer~~, and may provide the
22 applications and information to other qualified organizations
23 and individuals, as appropriate, for technical review of the
24 ~~archaeological plan~~ project design and recommendation
25 concerning the preservation and protection of the site or resource.

26 (g) The commission shall provide for the disposition of all
27 objects or other materials recovered, which may include
28 provisions for display in museums, educational institutions, and
29 other appropriate locations available to the public.

30 (h) The commission may contract with persons, firms,
31 corporations, or institutions who, for the privilege of having
32 temporary possession of recovered archaeological resources, will
33 advance to the commission the money necessary to conduct
34 salvage operations or to purchase from a permitholder, from his
35 or her fair share, archaeological resources which the commission
36 determines should remain the property of the state. A contract
37 may be made only on the condition that the commission may, at
38 any time, repay the money advanced, without interest or
39 additional charges of any kind, and recover possession of the
40 resources. During the time the resources are in the possession of

1 the entity advancing the money, the resources shall be available
2 for viewing by the general public at a nominal fee or without
3 charge.

4 (i) The commission may also contract with other state
5 agencies, qualified public or private institutions, local
6 governments, or individuals for public display of the
7 archaeological resources recovered. The commission shall
8 require assurances that appropriate security, qualified personnel,
9 insurance, and facilities for preservation, restoration, and display
10 of the resources loaned are provided under the contract.

11 SEC. 3. Section 6314 of the Public Resources Code is
12 amended to read:

13 6314. (a) ~~Any~~A person who removes, without authorization
14 from the commission, or ~~any~~a person who destroys or damages
15 an archaeological site or any historic resource, ~~which~~ *that* is
16 located on or in the submerged lands of, and which is the
17 property of, the state, is guilty of a misdemeanor and is
18 punishable by imprisonment in the county jail not to exceed six
19 months or a fine not to exceed five thousand dollars (\$5,000), or
20 by both.

21 (b) ~~In addition, the~~The commission, or, at its request, the
22 Attorney General or a district attorney in whose jurisdiction the
23 violation occurred, may seek civil damages for the *intentional or*
24 *negligent* damage, loss, or destruction of abandoned shipwrecks,
25 their gear or cargo, or any archaeological site or historic resource
26 located on or in submerged lands of the state. ~~Any~~A vessel used
27 ~~to damage, destroy, or cause~~ *by a person who damages, destroys,*
28 *or causes* the loss of, any such shipwreck or archaeological site
29 or historic resource, *whether intentionally or negligently* is
30 subject to a proceeding in rem by the state for the costs and
31 damages resulting from that damage, destruction, or loss.
32 Enforcement may include, where appropriate, a restraining order
33 or injunctive relief to restrain and enjoin violations or threatened
34 violations of Section 6309, Section 6313, or this section and for
35 the return of items taken in violation of these sections.

36 (c) ~~Any~~An artifact, object, or material which has been
37 removed from a state submerged archaeological site or
38 submerged historic resource, as specified in subdivision (a), and
39 which is found in any watercraft occupied by persons who do not
40 hold a permit as required by Section 6309 or Section 6313 or

1 other reasonable evidence of legal possession is prima facia
2 evidence of violation of that section and the artifact, object, or
3 material may be confiscated by any state, federal, or local law
4 enforcement officer. Artifacts, objects, or materials confiscated
5 under this section shall be returned to the person claiming
6 ownership, *upon proof of ownership or legal right to possession*,
7 within 30 days of their confiscation, unless a prosecuting
8 attorney determines that they are required as evidence in the
9 prosecution of a criminal violation.

10 (d) In ~~any~~ a case in which a district attorney, at the request of
11 the commission, or with its concurrence, enforces subdivision
12 (a), the commission shall, notwithstanding Section 1463 of the
13 Penal Code, be entitled to an equal division of the fine imposed.
14 *Damages obtained by the prosecution of subdivision (b) shall be*
15 *divided equally between the commission and the prosecuting*
16 *agency.*

17 (e) All state and local law enforcement agencies and officers
18 are directed to assist in enforcing this section, and are requested
19 to work with and seek the cooperation of federal law
20 enforcement agencies, including deputizing federal officers when
21 appropriate.